

DRAFT LEGISLATION TO ESTABLISH A
MANDATE REDETERMINATION PROCESS

AND

AMEND GOVERNMENT CODE SECTIONS 17556 AND 17557

SECTION 1

ADD NEW SECTION 17570 TO THE GOVERNMENT CODE TO READ:

(a) The commission may adopt a new test claim decision to supersede one previously adopted only upon a showing that the state's liability **for that test claim decision** pursuant to Article XIII B, Section 6, subdivision (a) of the California Constitution and Sections 17514 and 17556 of the Government Code has been modified based on a subsequent change in law.

(b) For purposes of this section the following definitions shall apply:

(1) "Test claim decision" is defined as a decision of the Commission on State Mandates on a test claim filed pursuant to Government Code Section 17551 or a decision of the Board of Control, on a claim for state reimbursement filed under Article 1 (commencing with Section 2201), Article 2 (commencing with Section 2227), and Article 3 (commencing with Section 2240) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code prior to January 1, 1985.

(2) A "subsequent change in law" is a change in "mandates law" or a change in law that **requires** a finding pursuant to Section 17556 of the Government Code. "Mandates law" is defined as published court decisions arising from state mandate determinations by the Board of Control and the Commission on State Mandates or addressing Article XIII B, Section 6 of the California Constitution, Government Code Sections 17500 and following. "Mandates law" also includes statutory amendments to Government Code Sections 17500 and following and amendments to Article XIII B, Section 6 of the California Constitution, except that a "subsequent change in law" does not include the amendments to Article XIII B, Section 6 of the California Constitution that were approved by the voters on November 2, 2004. A "subsequent change in law" also does not include a change in the statutes or executive orders that

1 impose new state-mandated activities and require a finding pursuant to Section
2 17551, Subdivision (a).

3 (c) A request to adopt a new test claim decision pursuant to this section may be filed by a
4 local agency or school district, statewide association of local agencies or school districts,
5 or the Department of Finance, Controller or other affected state agency.

6 (d) The commission shall adopt procedures for receiving requests to adopt a new test claim
7 decision pursuant to this section and for providing notice and a hearing on those requests.
8 The procedures shall do all of the following:

9 (1) Specify that all requests for adoption of a new test claim decision shall be filed on
10 a form prescribed by the commission that shall contain at least the following
11 elements and documents:

12 (a) The name, case number, and adoption date of the prior test claim decision.

13 (b) A detailed analysis of how and why the state's liability for mandate
14 reimbursement pursuant to Article XIII B, Section 6 of the California
15 Constitution and Sections 17514 and 17556 has been modified.

16 (c) The actual or estimated amount of the annual statewide change in the
17 state's liability for mandate reimbursement pursuant to Article XIII B,
18 Section 6 of the California Constitution and Sections 17514 and
19 17556.

20 (d) Identification of all of the following, if relevant:

- 21 1. Dedicated state funds appropriated for this program
- 22 2. Dedicated federal funds appropriated for this program
- 23 3. Fee authority to offset the costs of this program
- 24 4. Federal law
- 25 5. Court Decision
- 26 6. State or local ballot measure and date of election

27 (e) All assertions of fact shall be supported with declarations under penalty of
28 perjury, based on the declarant's personal knowledge, information or
29 belief, and be signed by persons who are authorized and competent to
30 do so, as follows:

1. Declarations of actual or estimated annual statewide costs that will or will not be incurred to implement the alleged mandate.
2. Declarations identifying all local, state, or federal funds, or fee authority that may or may not be used to offset the increased costs that will or will not be incurred by claimants to implement the alleged mandate or result in a finding of no costs mandated by the state pursuant to Section 17556.
3. Declarations describing new activities performed to implement specific provisions of the test claim statute or executive order alleged to impose a reimbursable state-mandated program.
4. Specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program.

(2) A request for adoption of a new test claim decision shall be signed at the end of the document, under penalty of perjury by the requestor or its authorized representative, with the declaration that the request is true and complete to the best of the declarant's personal knowledge, information, or belief. The date of signing, the declarant's title, address, telephone number, facsimile machine telephone number, and electronic mail address shall be included.

(3) If a completed request is not received by the commission within 30 calendar days from the date an incomplete request was returned by the commission, the original filing date may be disallowed.

(4) Establish a two-step hearing process to consider requests for adoption of a new test claim decision pursuant to this section. Before the commission considers a request for adoption of a new test claim decision, a hearing shall be conducted to determine if the requestor has made a showing that the state's liability pursuant to Article XIII B, Section 6, subdivision (a) of the California Constitution and Sections 17514 and 17556 of the Government Code has been modified based on a subsequent change in law. If the commission determines that the requestor has made this showing pursuant to subdivision (a), it shall

notice the request for hearing and to determine if a new test claim decision shall be adopted to supersede one previously adopted.

(5) Provide for presentation of evidence and legal argument by the requestor, interested parties, the Department of Finance, any other affected state agency, and interested person.

(6) Permit a hearing to be postponed at the request of any party, without prejudice, until the next scheduled hearing.

(e) A request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year.⁺

(f) Upon receipt of a complete request for adoption of a new test claim decision, the commission shall notify interested parties, the State Controller, Department of Finance, affected state agencies, and the Legislative Analyst.

(g) If the commission determines that the requestor has made a showing that the state's liability pursuant to Article XIII B, Section 6, subdivision (a) of the California Constitution and Sections 17514 and 17556 of the Government Code has been modified based on a subsequent change in law, the State Controller shall notify eligible claimants that the request has been filed with the commission and that the original test claim decision may be superseded by a new decision adopted by the commission. Such notification may be included in the next set of claiming instructions issued to eligible claimants.

(h) If the commission adopts a new test claim decision that supersedes the one previously adopted and shows that the state's liability for mandate reimbursement pursuant to Article XIII B, Section 6 of the California Constitution and Sections 17514 and 17556 has been modified, the commission shall adopt new parameters and guidelines or amend existing parameters and guidelines or reasonable reimbursement methodology pursuant to Sections 17557, 17557.1-17557.2.

(i) Any new parameters and guidelines adopted or amendments made to existing parameters and guidelines or reasonable reimbursement methodology shall conform to the new test claim decision adopted by the commission.

¹ This language is consistent with Government Code section 17557, subdivision (e).

(j) The State Controller shall follow the procedures in Sections 17558, 17558.5, 17560, 17561, and 17561.5, as applicable to the new test claim decision adopted by the commission pursuant to this section.

(k) If the commission adopts a new test claim decision which will result in reimbursement pursuant to Article XIII B, Section 6 of the California Constitution and Sections 17514 and 17556, it shall determine the amount to be subvended to local agencies and school districts by adopting a new statewide cost estimate pursuant to Section 17557.

(l) The commission shall notify the Legislature pursuant to Section 17555 within 30 days of adopting a new test claim decision pursuant to this section, and report to the Legislature pursuant to Sections 17600 and 17601.

SECTION 2

ADD NEW SECTION 17570.1 TO READ:

As part of its review and consideration pursuant to Sections 17581 and 17581.5, the Legislature may, through statute, request that the Department of Finance consider exercising its authority pursuant to Section 17570, subdivision (c).

AMENDMENTS TO EXISTING LAW

SECTION 3

AMEND SECTION 17556 OF THE GOVERNMENT CODE TO READ:

§ 17556. Findings

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following:

(a) The claim is submitted by a local agency or school district that requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given

1 program shall constitute a request within the meaning of this subdivision. This
2 subdivision applies regardless of whether the resolution from the governing body or a
3 letter from a delegated representative of the governing body was adopted or sent prior to
4 or after the date on which the state statute or executive order was enacted or issued.

5 (b) The statute or executive order affirmed for the state a mandate that had been declared
6 existing law or regulation by action of the courts. This subdivision applies regardless of
7 whether the action of the courts occurred prior to or after the date on which the state
8 statute or executive was enacted or issued.

9 (c) The statute or executive order imposes a requirement that is mandated by a federal law or
10 regulation and results in costs mandated by the federal government, unless the statute or
11 executive order mandates costs that exceed the mandate in that federal law or regulation.
12 This subdivision applies regardless of whether the federal law or regulation was enacted
13 or adopted prior to or after the date on which the state statute or executive order was
14 enacted or issued.

15 (d) The local agency or school district has the authority to levy service charges, fees, or
16 assessments sufficient to pay for the mandated program or increased level of service.
17 This subdivision applies regardless of whether the charges, fees, or assessment authority
18 was enacted or adopted prior to or after the date on which the state statute or executive
19 order was enacted or issued.

20 (e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for
21 offsetting savings to local agencies or school districts that result in no net costs to the
22 local agencies or school districts, or includes additional revenue that was specifically
23 intended to fund the costs of the state mandate in an amount sufficient to fund the cost of
24 the state mandate. This subdivision applies regardless of whether the (1) offsetting
25 savings that result in no net costs were enacted or adopted prior to or after the date on
26 which the statute or executive order was enacted or issued, or (2) the additional revenue
27 that was specifically intended to fund the costs of the state mandate in an amount
28 sufficient to fund the cost of the state mandate was appropriated before or after the date
29 on which the statute or executive order was enacted or issued.

(f) The statute or executive order imposes duties that are necessary to implement, ~~reasonably within the scope of~~, or expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

SECTION 4

AMEND SECTION 17557 OF THE GOVERNMENT CODE TO READ:

(a) If the commission determines there are costs mandated by the state pursuant to Section 17551, it shall determine the amount to be subvented to local agencies and school districts for reimbursement. In so doing it shall adopt parameters and guidelines for reimbursement of any claims relating to the statute or executive order. The successful test claimants shall submit proposed parameters and guidelines within 30 days of adoption of a statement of decision on a test claim. The proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program. At the request of a successful test claimant, the commission may provide for one or more extensions of this 30-day period at any time prior to its adoption of the parameters and guidelines. If proposed parameters and guidelines are not submitted within the 30-day period and the commission has not granted an extension, then the commission shall notify the test claimant that the amount of reimbursement the test claimant is entitled to for the first 12 months of incurred costs will be reduced by 20 percent, unless the test claimant can demonstrate to the commission why an extension of the 30-day period is justified.

(b) In adopting parameters and guidelines, the commission may adopt a reasonable reimbursement methodology.

(c) The parameters and guidelines adopted by the commission shall specify the fiscal years for which local agencies and school districts shall be reimbursed for costs incurred.

1 However, the commission may not specify in the parameters and guidelines any fiscal
2 year for which payment could be provided in the annual Budget Act.

3 (d) A local agency, school district, or the state may file a written request with the commission
4 to amend, ~~modify, or supplement the~~ parameters or guidelines. The commission may,
5 after public notice and hearing, amend, ~~modify, or supplement the~~ parameters and
6 guidelines. A parameters and guidelines amendment submitted within 90 days of the
7 claiming deadline for initial claims, as specified in the claiming instructions pursuant to
8 Section 17561, shall apply to all years eligible for reimbursement as defined in the
9 original parameters and guidelines. A parameters and guidelines amendment filed more
10 than 90 days after the claiming deadline for initial claims, as specified in the claiming
11 instructions pursuant to Section 17561, and on or before the claiming deadline following
12 a fiscal year, shall establish reimbursement eligibility for that fiscal year. A request to
13 amend parameters and guidelines may be filed to make any of the following changes to
14 parameters and guidelines:

- 15 (1) Delete any reimbursable activity that is repealed by statute or executive order
16 after the adoption of the original or last amended parameters and guidelines.
- 17 (2) Update offsetting revenues and offsetting savings that apply to the mandated
18 program and do not require a new legal finding that there are “no costs
19 mandated by the state” under Section 17556, Subdivision (e).
- 20 (3) Include a reasonable reimbursement methodology for all or some of the
21 reimbursable activities.
- 22 (4) Clarify reimbursable activities consistent with the original statement of
23 decision.
- 24 (5) Add new reimbursable activities that are reasonably necessary for the
25 performance of the original state-mandated program.
- 26 (6) Define what is not reimbursable consistent with the original statement of
27 decision.
- 28 (7) Consolidate the parameters and guidelines for two or more programs.
- 29 (8) Amend the “boilerplate” language. For purposes of this section, “boilerplate”
30 language is defined as the language in the parameters and guidelines that is

1 not unique to the state-mandated program that is the subject of the parameters
2 and guidelines.

3 (e) A test claim shall be submitted on or before June 30 following a fiscal year in order to
4 establish eligibility for reimbursement for that fiscal year. The claimant may thereafter
5 amend the test claim at any time, but before the test claim is set for a hearing, without
6 affecting the original filing date as long as the amendment substantially relates to the
7 original test claim.

8 (f) In adopting parameters and guidelines, the commission shall consult with the Department
9 of Finance, the affected state agency, the Controller, the fiscal and policy committees of
10 the Assembly and Senate, the Legislative Analyst, and the claimants to consider a
11 reasonable reimbursement methodology that balances accuracy with simplicity.